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No. A–743

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

GREGORY JONES, BY AND THROUGH
HIS NEXT FRIEND, LARRY JONES,

Petitioner,

v.

UNIVERSITY INTERSCHOLASTIC LEAGUE, ET. AL.,

Respondents.

REPLY BRIEF TO UNIVERSITY INTERSCHOLASTIC LEAGUE, ET AL.'S BRIEF IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

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TO THE SUPREME COURT OF THE UNITED STATES:

I.

THE RESPONDENTS' EDITORIAL ABUSE

Throughout the pendency of the instant litigation, the Respondents have consistently twisted the facts and ignored the now–binding Findings of Fact and Conclusions of Law entered by the Trial Court in

this cause.[1] The Respondents' Opposition Brief is no exception. The Record rejects the Respondents' "creativity":

Respondents' Opposition Brief:

p. 5) "Petitioner ... [w]ould very likely be only the second string quarterback his senior year if he stayed at MacArthur."

Record: Coach Overton of MacArthur stated that the Petitioner had as promising a chance of being the starting quarterback at MacArthur as did the other candidate. (S.F. at 242–46, 248–49, 256; Tr. at 46–47, 71–72). Athletics had nothing to do with the Jones family's move. (Findings of Fact Nos. 7, 16, 17, 18, 22, 25; Conclusions of Law Nos. 3–4).

Respondents' Opposition Brief:

p. 5–6) "Petitioner's family 'moved' [t]o Highland Park ... [and] 'rented' a home in Highland Park." (Insinuation of improper family move).

Record: The family did not move for athletic purposes; rather, the Jones family moved to improve the quality of their life, reduce living expenses and facilitate another son who was attending the Baylor College of Dentistry. (Findings of Fact Nos. 4–7, 25, 27, 38; Conclusions of Law 3–4).

Respondents' Opposition Brief:

p. 6) Greg Jones "might be able to play at Highland Park because they had just lost their star passing quarterback to graduation..."

Record: There is no Finding of Fact which supports this aberrant editorialization.

Respondents' Opposition Brief:

p. 6) "A telephone call to school officials suggested that Petitioner had moved to get a better chance at starting quarterback."

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[1]The Respondents conspiculously made no cite to the Record in "support" of their hollow arguments.

Record: This remark refers to the infamous anonymous telephone call that was improperly inserted into the hearing's deliberations by Dr. Poteet, the Executive Committee's Chairman. Dr. Poteet's shenanigan was condemned by the Trial Court as constituting a violation of the Petitioner's right to a fair hearing. (Finding of Fact No. 14; S.S.F. 2–5). Furthermore, the UIL's own witnesses admitted that such suspect tactics had no place in school administrative procedures and violated the spirit of the UIL Constitution and Contest Rules. (Findings of Fact Nos. 13–18, 23–24, 26, 33–39; Conclusions of Law Nos. 2, 5–6, 13; C.C.R. at § 118 (1985)).

Respondents' Opposition Brief:

p. 6) "Principals [m]et with Petitioner and his parents to determine if this was so." (i.e., the Petitioner was provided an opportunity to be heard).

Record: This is a blatant misstatement of the facts. The anonymous phone call occurred prior to the first Executive Committee Meeting. Neither the Petitioner nor his family were advised, in the first instance, of the alleged anonymous phone call, nor were they provided any opportunity to be heard in order to rebut its patent invalidity. This was true, despite the expressed prehearing intention of the Garland (majority vote) representative to reject the Greg Jones' transfer request. (S.F. at 78–79, 93–96, 141, 210, 212–18, 237–56, 283, 291–93, 348, 357–58, 567–69, 576–77, 580–91, 595, 600–01; P.S.F. at 41, 72–75, 77–79, 105, 116–17; Findings of Fact Nos. 15, 26, 29).

Respondents' Opposition Brief:

p. 7) "[The] Respondents moved to dismiss the lawsuit for the failure to even state a Federal claim. The United States District Court agreed..."

Record: The Respondents removed the case to the Federal District Court on the basis of Federal claims. Thereafter, the United States District Court did not dismiss the suit, but rather

remanded the case to State Court for a trial on the merits. The remand Order did not limit the Petitioner's claims.

Respondents' Opposition Brief:

p. 7) "In a fence–straddling order, the State Court improperly substituted its Judgment for those of the school principals..."

Record: The Trial Court's Order was anything but 'fence–straddling.' Instead, the Trial Court entered scathing Findings and Conclusions which condemned the UIL and the Executive Committee for their respective violations of Greg Jones' Equal Protection guarantees under the Federal standards declared in Yick Wo v. Hopkins, 118 U.S. 356, 6 S. Ct. 1064, 30 L.Ed. 220 (1886).

Respondents' Opposition Brief:

p. 8) "The State District Court [c]ould not conjure up violations of the United States Constitution to justify any application of 42 U.S.C. § 1983 et seq. or the award of attorney's fees."

Record: The Trial Court did fail to award the Petitioner his reasonable attorney's fees as it determined in Finding of Fact No. 41. Subsequent to the entry of the Final Judgment, the Petitioner filed his timely Motion to Modify Final Judgment in which he requested that the Trial Court, pursuant to 42 U.S.C. § 1983 et seq., award the fees determined in Finding of Fact No. 41. The Trial Court failed to rule on the request for fees, despite its unquestionable reliance on Yick Wo, supra. Thus, the Petitioner perfected his cross–appeal thereon to the Court of Appeals. The Appellate Courts refused to rule on the Petitioner's perfected Point of Error regarding an award of attorney's fees.

Respondents' Opposition Brief:

p. 8) "Petitioner appealed the Trial Court's denial of attorney's fees. This appeal did not raise a substantial question, and the appeal was dismissed by the Texas Court of Appeals..."

Record: This statement is not a true reflection of the Court of Appeals' Order. Rather, the Court of Appeals dismissed the appeal

based solely on its determination of mootness, because Greg Jones had since graduated.

Respondents' Opposition Brief:

p. 8) "The issue of the power of the Trial Court to substitute its judgment for the judgment of the local school officials, [w]as declared to be moot since Petitioner had already graduated from High School."

Record: Nowhere does the Court of Appeals' Opinion address the Trial Court's alleged "substitution of its judgment for that of school officials."

Hopefully, the Court will pay special attention to the Record of the instant suit. The Respondents should not be permitted to prevail, simply because they have audaciously presented twisted and misleading editorializations. In truth, the tone and content of the Respondents' Opposition is not so different from the manner in which they "blackballed" the Petitioner.

II.

THE TEXAS COURTS NEVER REJECTED THE PETITIONER'S FEDERAL CONSTITUTIONAL CLAIMS

A.

The Texas Appellate Courts' Additional Constitutional Violations

To begin, neither the Court of Appeals nor the Texas Supreme Court ever ruled that the Petitioner had failed to prevail on a substantial Federal constitutional issue. (App. I). To reiterate, the Court of Appeals dismissed the appeal and vacated the Trial Court's Judgment based solely on mootness. Although the single issue of the Petitioner's per se participation in HPHS athletics had become moot, other "live"

issues remained to be adjudicated. See Petition for Writ of Certiorari at 13–27.[2]

Furthermore, the Court of Appeals acquiesced in the Trial Court's Findings and Conclusions, none of which were overturned. (App. I). The Findings are now binding upon the Respondents. See Petition for Writ of Certiorari at 13 n. 11. Nonetheless, the judicial failure of the Texas Appellate Courts to consider the Petitioner's Points of Error constituted additional errors of both Equal Protection and Due Process proportions.[3]

The Respondents have attempted to obscure the Petitioner's right to a ruling on his properly perfected Points of Error regarding attorney's fees. The issue as to the Petitioner's properly perfected Point of Error receiving an appellate ruling does not hinge upon whether or not Greg Jones raised a substantial, Federal constitutional question.[4] Texas Courts have long recognized the absolute right of a litigant to

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[2]As the Petitioner received the entirety of his requested relief, he was entitled to fees as a "prevailing party." Hewitt v. Helms, 55 U.S.L.W. 4907 (U.S. June 19, 1987).

[3]The Respondents insist upon mixing "apples with oranges" in their attempt to obfuscate the important Federal policies at stake. In particular, the Petitioner is no longer asserting any rights under the Due Process clause except for that violation described hereinabove under II(A). The Respondents' assertion to the contrary, is a "smoke screen" to hide the fact that Greg Jones has not alleged a Federal constitutional right to play in extracurricular activities. However, Greg Jones has always maintained that: (1) he was entitled to be treated as other similarly situated students; which meant that (2) he would not be subjected to the vicious self–dealing of an Executive Committee whose "raison d'etre" was to ensure Highland Park's 1985 football season downfall. (Findings of Fact Nos. 9–11, 13–21, 23–24, 26–28, 32–35, 37–39).

Last, it should be reiterated that all of the Executive Committee members swore that impartiality and fairness were essential to the proper administration of school affairs, including athletics. See Petition for Writ of Certiorari at 7–11.

[4]Of course, as indicated in the instant Petition, Greg Jones raised material Federal constitutional questions dealing with Equal Protection and familial privacy violations. The Respondents' conclusion regarding the Federal District Court's remand Order is incorrect. The United States District Court, in remanding the case, cited Maroney v. University Interscholastic League, 764 F.2d 403 (5th Cir. 1985). However, the Maroney case specifically recognized that a denial of "freedom of familial choice" is a substantial Federal question. The District Court, apparently, overlooked that Greg Jones had expressly raised a Federal question dealing with familial choice.

have points of error ruled upon by the Appellate Courts. Greg Jones properly perfected his claim for attorney's fees as the prevailing party. Yet, the Appellate Courts ignored that issue, notwithstanding Greg Jones' entitlement to a ruling thereon. See Petition for Writ of Certiorari at 20–21, 23.[5]

B.

Equal Protection

In their Opposition, the Respondents have absolutely ignored both Yick Wo, supra, and Spring Branch v. Stamos, 695 S.W.2d 556 (Tex. 1985), cert. denied, ___ U.S. ___, 106 S. Ct. 1170, ___ L.Ed.2d ___ (1986), respectively, which confirm the instant Petition's validity. The Respondents' conscious refusal to distinguish or present any controverting authority to the Petitioner's well–supported argument should constitute a tacit admission. See Petition for Writ of Certiorari at 15–17, including n. 12.

Simply, Greg Jones never sought more rights than those provided to other students. Greg Jones established his right to be provided the same rights as other similarly situated students. In other words, his properly completed PAP Form, which had resulted in automatic approval for every other transfer request over the last thirty (30) years, should have been reviewed under the same standard as other requests. See Petition for Writ of Certiorari at 5–7.

Last, the Respondents' statement, without citation to any authority, that the Texas Court of Appeals found "no showing of the actual and purposeful discrimination imagined by Petitioner," borders on the fantastic. In fact, the Texas Appellate Courts refused to sustain the UIL's challenges to the forty–one (41) Findings and the seven (7)

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[5]Again, the Respondents failed to present any controverting authority or distinguish the Petitioner's well–settled Texas precedent. The Respondents cite, only, Sanger v. First National Bank of Amarillo, 170 S.W. 1087 (Tex. Civ. App.—Amarillo 1914, writ ref'd). However, the Sanger case is inapposite for the reason that Greg Jones, unlike the Sanger plaintiff, requested a specific ruling on his Point of Error. The Petitioner herein objected to no ruling at all.

Conclusions which underscored the glaring reality of the Respondents', "purposeful discrimination."

C.

Familial Privacy

Once again, the Respondents inexplicably refused to distinguish the Petitioner's legal authorities supporting the Petitioner's familial privacy claims. First, Greg Jones has never alleged a constitutional right to participate in extracurricular athletics. Thus, it is perplexing, indeed, that the Respondents can contend that Niles v. University Interscholastic League, 715 F.2d 1027 (5th Cir. 1983), does not, in fact, support the Petitioner's familial privacy claims.

In Niles, the Court defined the alleged specific familial privacy infringement as: (1) the prohibition on a single student's ability to travel between the mother's locale in California and the guardian's in Texas; in order to (2) continue to participate in interscholastic athletics. Niles, supra at 1031. The Court found that the trespass against a lone student did not rise to a constitutional level under the following analysis:

1) No constitutional right exists to participate in interscholastic sports; therefore,

2) The "encroachment" of the rule on the child's freedom of familial association was "limited in scope and of insignificant magnitude."

Niles, supra at 1041.

Unlike the Plaintiff in Niles, Greg Jones has not alleged a familial privacy violation in an attempt to circumvent the fact that there is no fundamental right to play football in Texas. Rather, the "gravamen" of the Petitioner's complaint is the Executive Committee's arbitrary, capricious and prejudiced decision–making process which punished the Jones family. See Petition for Writ of Certiorari at 17–19.

III.

REQUEST TO AFFIRM CONSTITUTIONAL PRECEDENT

The instant Petition does not ask this Court to "overturn years of Federal precedent" regarding who plays what positions on a local high school football team. See Opposition at 15. Greg Jones did not claim a constitutionally protected right to play interscholastic sports.

On the other hand, Greg Jones has established that: (1) the Executive Committee acted in an arbitrary, capricious and discriminatory manner and treated him differently than all other similarly situated students; (2) the Jones family's move was genuinely motivated; and (3) the family suffered a violation of their fundamental right to familial privacy. (Findings of Fact Nos. 4–11, 13–22, 23–25, 26–28, 32–35, 37–39; Conclusions of Law Nos. 3–4, 5–6). Furthermore, the Petitioner's Federal claims are well–supported by Federal law. Yick Wo, supra; Spring Branch, supra; Niles, supra; Maroney, supra; Southerland v. Thigpen, 784 F.2d 713, 715 (5th Cir. 1986); Whalen v. Roe, 429 U.S. 589, 600 n. 26, 97 S. Ct. 869, 876–77 n. 26, 51 L.Ed.2d. 64 (1977); Carey v. Population Service International, 431 U.S. 678, 684–86, 97 S. Ct. 2010, 2016, 52 L.Ed.2d. 675 (1977).

IV.

CONCLUSION

The Texas educational environment needs an injection of integrity. The complicity of the Governor of our State in the S.M.U. "athletes for pay" scandal makes evident that moral discipline is lacking at even the highest levels of Texas educational administration. The many fine students and faculty members in our State deserve this Court's dethroning of "king football" and, correlatively, the resurrection of individual dignity.

WHEREFORE, PREMISES CONSIDERED, Greg Jones respectfully prays that the Supreme Court grant his Petition for Writ of Certiorari, that the Supreme Court reverse or modify the Judgments of the Courts below to the extent that Greg Jones recover the reasonable and necessary attorney's fees determined below, or alternatively, that the action be remanded to the State District Court for consideration as to

whether or not additional attorney's fees should be awarded in connection with Petitioner's Petition to this Court, and for such other and further relief, whether at law or in equity, to which the Supreme Court believes that Greg Jones may be justly entitled.

Respectfully submitted,

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By _____
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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been mailed, certified, return receipt requested to Peter Nolan, Esq., counsel for Respondents, on this the 31 day of July, 1987.

_____
SAMUEL L. BOYD